

**State of California**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF**  
**PROPOSED REGULATIONS**  
**(Adoption of Emergency Regulations)**

**Subject Matter of Regulations: Workers Compensation-Descriptions of Disabilities, Primary  
Treating Physician Reporting Requirements,  
Schedule for Rating Permanent Disabilities**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 9725, Et Seq.**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, 4603.5 and 5307.3 proposes to modify the text of the following sections of Title 8, California Code of Regulations:

Section 9785.2	Primary Treating Physician's Progress Report (PR-2).
Section 9785.4	Primary Treating Physician's Permanent and Stationary Report (PR-4).
Section 9805	Schedule for Rating Permanent Disabilities, Adoption, Amendment.
Section 10151	Schedule for Rating Permanent Disabilities.
Section 10160	Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employees.
Section 10161	Forms.
Section 10165.5	Notice of Options Following Permanent Disability Rating (DEU Form 110)

The Administrative Director further proposes to add the following section to Title 8, California Code of Regulations:

Section 9805.1	Data for Collection, Evaluation, and Revision of Schedule.
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**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Kathleen Llemos, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Wednesday, April 27, 2005**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

#### **AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Kathleen Llemos, at (415) 703-4600 to arrange to inspect the rulemaking file.

#### **DOCUMENTS SUPPORTING THE RULEMAKING FILE**

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

#### **FORMAT OF PROPOSED MODIFICATIONS**

##### **Proposed Text Noticed for This 15-Day Comment Period on Emergency Regulatory Text:**

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

#### **SUMMARY OF PROPOSED CHANGES**

##### **Modifications to Section 9785.2—Primary Treating Physician's Progress Report (PR-2).**

The introductory paragraph of the Primary Treating Physician's Progress Report (PR-2) has been amended for clerical error to clarify that if the patient is "permanent and stationary" (i.e., has

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reached maximum medical improvement), the physician may use DWC Forms PR-3 or PR-4. The specific text of the form, at page 7 of the proposed regulations, is amended to state: “You may use DWC Forms PR-3 or PR-4.”

#### **Modifications to Section 9785.4—Primary Treating Physician’s Permanent and Stationary Report (PR-4).**

The introductory paragraph contained in the first box of the Primary Treating Physician’s Permanent and Stationary Report (PR-4) has been amended for clerical error to clarify that the form is designed to be used by the primary treating physician to report the initial evaluation of permanent impairment to the claims administrator. The specific text of the form, at page 17 of the proposed regulations, is amended to state: “It is designed to be used by the primary treating physician to report the initial evaluation of permanent ~~disability~~ impairment to the claims administrator.”

The language contained following the section of the form entitled “pain assessment” has been amended to clarify that if the burden of the worker’s condition has been increased by pain-related impairment in excess of the pain component already incorporated in the WPI rating under Chapters 3-17 of the AMA Guides, the additional whole person impairment rating may be specified in the range of 0% to 3% whole person impairment. The specific text of the form, at page 19 of the proposed regulations, is amended to state: “If the burden of the worker’s condition has been increased by pain-related impairment in excess of the pain component already incorporated in the WPI rating under Chapters 3-17 of the AMA Guides, 5<sup>th</sup> Edition, specify the additional whole person impairment rating (0% up to 3% WPI) attributable to such pain.”

The language contained in the note following the section of the form on “functional capacity assessment” has been amended for clerical error to substitute the word “disability” with the word “impairment.” The specific text of the form, at page 21 of the proposed regulations, is amended to state: “The following assessment of functional capacity is to be prepared by the treating physician, solely for the purpose of determining a claimant’s ability to return to his or her usual and customary occupation, and will not be considered in the permanent ~~disability~~ impairment rating.”

#### **Modifications to Section 9805—Schedule for Rating Permanent Disabilities, Adoption, Amendment.**

Section 9805 is amended to clarify that the permanent disability rating schedule is effective for dates of injury on or after January 1, 2005, and for dates of injury prior to January 1, 2005, in accordance with subdivision (d) of Labor Code section 4660. The specific text Section 9805, at page 24 of the proposed regulations, is amended to state: “The schedule shall be effective for dates of injury on or after January 1, 2005; and for dates of injury prior to January 1, 2005, in accordance with subdivision (d) of Labor Code section 4660, and it shall be amended at least once every five years.” The Permanent Disability Rating Schedule, as incorporated by reference under this section, has been modified as follows:

##### **Section 1—Introduction and Instructions**

The text of subdivision (a) Summary of the Methodology, contained at Roman numeral II. Rating Procedures, B. Calculation of Rating, No. 3 Adjustment of Diminished Future Earning Capacity

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(FEC), at page 1-6, of the Schedule has been corrected for clerical error to delete the word “below” at paragraphs 2, 3, and 4.

The paragraph on top of Table A, at page 1-7, has been corrected to substitute the correct Table. Thus, Table A has been inserted instead of Table B.

The adjustment factors reflected in Table A have been amended to correct the adjustment factor percentages for clerical error as follows:

Table A

Range of Ratios			
Low	High	FEC Rank	Adjustment Factor
1.647	1.810	One	1.100000
1.476	1.646	Two	1.1429857
1.305	1.475	Three	1.185714
1.134	1.304	Four	1.2286571
0.963	1.133	Five	1.271429
0.792	0.962	Six	1.3143286
0.621	0.791	Seven	1.357143
0.450	0.620	Eight	1.400000

### Section 3—Occupations and Group Numbers

Section 3 has been amended at page 3-13 to correct a typographical error to reflect the occupation group number for 230 as Knitting Machine Operator, hosiery.

### Section 7—Examples

Section 7, setting forth rating examples illustrating all the basic components of disability rating, has been amended for clerical error as follows: At pages 7-2 to 7-3, the word “percentages” has been substituted by the word “ratings” for clarification purposes in examples A, B, and C. Footnotes 4 and 7, at pages 7-2, and 7-3, have been amended to delete the language “~~starting at page xx,~~” as superfluous. Footnotes 5 and 9, at page 7-3, have been amended to delete the language “~~,page xx,~~” as superfluous. Example C has been amended at page 7-3 to delete the word foot, and substitute the phrase “leg two inches.” Thus the sentence now reads: “Amputation of left ~~foot~~ leg two inches below knee.”

### Proposed Section 9805.1—Data Collection, Evaluation, and Revision of Schedule

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Proposed section 9805 has been added specify that the Administrative Director will collect for 18 months permanent disability ratings under the 2005 Permanent Disability Rating Schedule (PDRS) effective for injuries occurring on or after 1/1/05 and effective for injuries occurring on or after 4/19/04 and before 1/1/05 where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Labor Code Section 4601 to the injured employee. The section further provides that the Administrative Director will evaluate the data to determine the aggregate effect of the diminished future earning capacity adjustment on the partial permanent disability ratings under the 2005 PDRS. The section further provides that the Administrative Director will also revise, if necessary, the diminished future earning capacity adjustment to reflect consideration of an employee's diminished future earning capacity for injuries occurring on or after 1/1/05 based on the data collected. If the Administrative Director determines that there is not a sufficient amount of data to perform a statistically valid evaluation, the Administrative Director shall continue to collect data until a valid statistical sample is obtained. If there is a statistically valid sample of data that the Administrative Director determines supports a revision to the diminished future earning capacity adjustment, the Administrative Director will revise the PDRS before the mandatory five year statutory revision contained in Labor Code section 4660(c).

The specific text of proposed Section 9805.1, at page 24 of the proposed regulations, states as following: “**§9805.1 Data Collection, Evaluation, and Revision of Schedule**

“The Administrative Director shall: (1) collect for 18 months permanent disability ratings under the 2005 Permanent Disability Rating Schedule (PDRS) effective for injuries occurring on or after 1/1/05 and effective for injuries occurring on or after 4/19/04 and before 1/1/05 where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Labor Code Section 4601 to the injured employee; (2) evaluate the data to determine the aggregate effect of the diminished future earning capacity adjustment on the partial permanent disability ratings under the 2005 PDRS; and (3) revise, if necessary, the diminished future earning capacity adjustment to reflect consideration of an employee's diminished future earning capacity for injuries occurring based on the data collected. If the Administrative Director determines that there is not a sufficient amount of data to perform a statistically valid evaluation, the Administrative Director shall continue to collect data until a valid statistical sample is obtained. If there is a statistically valid sample of data that the Administrative Director determines supports a revision to the diminished future earning capacity adjustment, the Administrative Director shall revise the PDRS before the mandatory five year statutory revision contained in Labor Code section 4660(c).”

### **Modifications to Section 10151—Schedule for Rating Permanent Disabilities.**

The text of Section 10151 was deleted as redundant in the emergency regulations. The title of this section was not deleted in the emergency regulations and is now being deleted by strike-through as a clerical error.

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## **Modifications to Section 10160—Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employees.**

Section 10160 is amended to rename DEU Form 100. The form was originally entitled “Employee’s Permanent Disability Questionnaire.” The title of the form has been renamed “Employee’s Disability Questionnaire,” and the text Section 10160, at pages 26-27 of the proposed regulations, is amended at sections 10160(a)(2), 10160(b), 10160(d)(2) and 10160(e) to state, in pertinent part: “Employee’s ~~Permanent~~ Disability Questionnaire, (DEU Form 100).”

Section 10160 is further amended at subdivision (d)(1) to reflect the proper name of form 101. Thus the text of Section 10160(d)(1), at page 27 of the proposed regulations, is amended to state: “1. Request for Summary Rating Determination of Qualified Medical Evaluator’s Report, (DEU Form 101) as a cover sheet to the evaluation report.”

## **Modifications to Section 10161—Forms.**

This section was not modified in the emergency regulations due to clerical error. Section 10160 of the emergency regulations references DEU Form 100, 101 and it is necessary to modify these forms to be consistent with the emergency regulations. The regulatory text of Section 10161 is modified to reflect that DEU Forms 100 and 101 have been revised effective April 2005.

DEU Form 100 was originally entitled “Employee’s Permanent Disability Questionnaire.” The title of the form has been renamed “Employee’s Disability Questionnaire,” Thus, the title of the form, at page 28 of the proposed regulations, is amended to state: “Employee’s ~~Permanent~~ Disability Questionnaire.”

DEU Form 100 (Employee’s Disability Questionnaire) is further amended at the introductory paragraph to substitute the word “disability” with the word “impairment.”

The number of the form and revision date have been move to the top left portion of the form under the “State of California, Division of Workers’ Compensation, Disability Evaluation Unit,” for convenience purposes. The specific text of the form, at page 28 of the proposed regulations, states: “DEU Form 100 (Rev. 4/05). The line identifying the form and revision date at the bottom left of the form has been deleted and it is now reflected as follows: “~~DEU Form 100 (REV 2/95)~~”

The text of the form, at page 28 of the proposed regulations, is amended to state: “This form will aid the doctor in determining your permanent ~~disability~~ impairment.” The text of the form has been further modified to clarify a portion of the response to the question “How was your evaluating doctor selected, to read as follows: “From a list of doctors provided by the State of California, ~~Industrial Medical Council~~ Division of Workers’ Compensation. ~~From a list of doctors provided by the State of California, Information and Assistance Unit.~~” The text of the form was also amended to substitute the word injury for the word disability in one of the questions, which now states: “How does this ~~disability~~ injury affect you in your work.” Further the text of the form was amended to delete the word “permanent” in the second to last question, which now states: “Have you ever had a ~~permanent~~ disability as a result of another injury or illness? If so, when?”

DEU Form 101 (Request for Summary Rating Determination of Qualified or Agreed Medical Examiner’s Report) has been amended, at page 29 of the proposed regulations, as follows:

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The title of the form has been amended to state as follows: Request for Summary Rating Determination of Qualified ~~or Agreed~~ Medical Examiner's Evaluator's Report."

The number of the form and revision date have been move to the top left portion of the form under the "State of California, Division of Workers' Compensation, Disability Evaluation Unit," for convenience purposes. The specific text of the form, at page 29 of the proposed regulations, states: "DEU Form 101 (Rev. 4/05). The line identifying the form and revision date at the bottom left of the form has been deleted and it is now reflected as follows: "~~DEU Form 101 (REV. 2/95)~~"

The text of the form, at page 29 of the proposed regulations, is amended to state: The language contained at the top of the form to stating "[t]o be used for dates of injury on or after 1/1/91," is deleted as obsolete. The specific text of the form deleted, at page 29 of the proposed regulations, is as follows: "~~To be used for dates of injury on or after 1/1/91.~~"

The text of form has been further amended at introductory paragraph to add further instructions to the claims administrator as follows: "Use this form if employee is unrepresented and has not filed an application for adjudication." Instruction No. 1 has been renumbered instruction No. 2, and the word "disability" has been substituted with the word "impairment," The specific text of the form is amended to state: "~~1-2.~~ Complete this form and forward it along with a complete copy of all medical reports and medical records concerning this case to the physician scheduled to evaluate the existence of permanent ~~disability~~ impairment."

Instruction No. 2 has been renumbered instruction No. 3, superfluous language has been deleted, and the word "disability" has been substituted with the word "impairment," The specific text of the form is amended to state: "~~2-3.If the employee is unrepresented, be sure to s~~Send the EMPLOYEE's PERMANENT DISABILITY QUESTIONNAIRE, DEU FORM 100 to the Employee in time for the medical evaluation." Instruction No. 3 has been renumbered instruction No. 4."

Under the box entitled: "Instructions to the Physician," instruction No. 1 has been amended to delete the word "permanent." Further, instruction No. 3 has been amended for clarification purposes. The instruction now states: "~~3. If the employee is unrepresented, s~~Serve a copy of your report and the form 100 upon the claims administrator and the employee. ~~If the employee is represented, serve a copy of your report on the party or parties requesting the evaluation only.~~"

The text of the form has been further amended to provide a field requesting the date of the first medical report indicating the existence of permanent disability, and a field requesting the last date for which temporary disability indemnity was paid. The specific text of the language added, at page 29 of the proposed regulations, is as follows: "Date of first medical report indicating the existence of permanent disability:" and "Last date for which temporary disability indemnity was paid:" DEU Form 101 has also been amended to delete the following two fields as unnecessary: "~~Representative's name (if any):~~, and ~~Representative's address:~~"

#### **Modifications to Section 10165.5—Notice of Options Following Permanent Disability Rating (DEU Form 110)**

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Section 10165.5 is amended to amend the name of the form to delete the word “permanent.” Thus, the name of form 110 is now reflected at the title and in the text of the form in Section 10165.5, at page 32 of the proposed regulations, as follows: “Notice of Options following ~~permanent~~ Disability Rating, (DEU Form 110).” Further the word “permanent has been deleted from the first two sentences of the form, thus the form now reads, at page 32 of the proposed regulations, as follows: “This is a ~~permanent~~ disability rating determination (Rating) prepared by the State of California Disability Evaluation Unit within the Division of Workers’ Compensation. It describes your percentage of ~~permanent~~ disability.”